HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.583 of 2007

Between:

APSRTC rep. by its Managing Director,
Mushirabad, Hyderabad and two others

… Appellants

And

N. Ramachandra Reddy and another

… Respondents

Counsel for the appellants: Shri M.S.K. Rama Rao for Shri V.T.M. Prasad

Counsel for respondent No.1: Shri V. Narasimha Goud

::JUDGMENT::

July 26, 2007

Per G.S. Singhvi, CJ

This appeal by Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') and two others is directed against order dated 2.3.2006, vide which the learned Single Judge partly allowed the writ petition filed by respondent No.1, modified

award dated 19.11.2001 of Labour Court-II, Hyderabad (for short, 'the Labour Court') and directed payment of 50% back wages to him.

Respondent No.1 was appointed in the service of the Corporation as Apprentice Conductor on 17.9.1967. His services were regularised with effect from 20.5.1973. In 1974, his service was terminated, but he was reinstated pursuant to award passed by Additional Labour Court, Hyderabad in I.D.No.213 of 1986. He was promoted as Assistant Depot Clerk with effect from 7.10.1994. He was retired from service with effect from 31.5.1998 by treating his date of birth as 4.5.1940.

Soon after retirement, respondent No.1 filed application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), as amended by Andhra Pradesh Act No.32 of 1987, for grant of a declaration that his retirement with effect from 31.5.1998 is illegal and as per the recorded date of birth, he is entitled to continue in service. The same was registered as I.D.No.79 of 1998. In the statement of claim filed by him, respondent No.1 averred that he had studied up to 12th Class in Government Higher Secondary School, Nirmal, Adilabad District and his date of birth was entered in the school records as 4.5.1948; that at the time of initial appointment, he had produced the original school certificate, but the same was misplaced by the officer of the Corporation and his date of birth was erroneously recorded as 4.5.1940; that in the Provident Fund application and Nomination Form, which was duly attested by the Depot Manager, Armoor and the records of Andhra Pradesh State Road Transport Corporation Cooperative Credit Society, his date of birth was recorded as 4.5.1948; that his application for correction of date of birth was rejected on 12.11.1992 on untenable grounds and he was illegally retired from service with effect from 31.5.1998.

In the reply filed on behalf of the Corporation, it was averred that the applicant's (respondent No.1) recorded date of birth is 4.5.1940 and, accordingly, he was retired from service on 31.5.1998.

The learned Presiding Officer of the Labour Court, after detailed analysis of the evidence, concluded that the applicant's date of birth is 4.5.1948 and his retirement with effect from 31.5.1998 is illegal. Accordingly, he passed award dated 19.11.2001 for reinstatement of the applicant (respondent No.1) with continuity of service, but without back wages.

Respondent No.1 challenged the award of the Labour Court in Writ Petition No.9880 of 2002. In paragraph 4 of his affidavit, respondent No.1 has averred as under:

> "4. I submit that in pursuance of the above award, I was reinstated into service on 7.2.2002. I submit that from the date of termination i.e. from 31.5.1998 till I was reinstated into service on 7.2.2002, I was remained unemployee as I could not get any alternative employment in spite of my best efforts. Therefore, myself and my entire family have faced much hardship for no fault of us."

Notice of the writ petition was duly served on the non-petitioners, but neither of them filed counter to controvert the above reproduced averment.

The learned Single Judge noted that the learned Presiding Officer had not given any reason for declining the relief of back wages to the writ petitioner and directed the Corporation to pay him back wages for the period from 1.6.1998 to 6.2.2002. The relevant portion of the order passed by the learned Single Judge is extracted below:

> "I have perused the award. Evidently, no reasons are given by the Labour Court in declining the relief of back wages to the petitioner. The learned Standing Counsel for the respondent could not justify the award by substantial defence or Rule of Reason. In

such circumstances, the relief sought by the writ petitioner deserves to be allowed. However, the petitioner has not produced any certificate that he was not gainfully employed during the period from 1.6.1998 to 6.2.2002. In such circumstances, the respondent – Corporation is directed to pay half of the back wages to the petitioner for the period from 1.6.1998 to 6.2.2002."

Shri M.S.K. Rama Rao, learned counsel for the appellants argued that even though the award of the Labour Court did not contain reasons for denying the relief of back wages, the learned Single Judge should not have ordained payment of 50% back wages by assuming that respondent No.1 was not gainfully employed for the entire period from 1.6.1998 to 6.2.2002. Learned counsel emphasized that without engaging himself in some or other work, respondent No.1 could not have sustained himself and his family and this, by itself, should have been treated by the learned Single Judge sufficient for denying him the relief of back wages. Shri Rao also made efforts to convince us that the award of reinstatement passed by the Labour Court is vitiated by an error of law apparent on the face of the record by arguing that retirement from service does not constitute dismissal, discharge or termination of service and, therefore, the application filed by respondent No.1 under Section 2-A (2) was not maintainable.

Shri V. Narasimha Goud, learned counsel for respondent No.1 relied on the judgments of the Supreme Court in **Hindustan Tin Works v. Employees**[1], **Gujarat Steel Tubes Ltd. v. Mazdoor Sabha**[2], and **Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya**[3] and argued that the direction given by the learned Single Judge for payment of 50% back wages to his client does not suffer from any patent error, which may warrant interference under

Clause 15 of the Letters Patent. He submitted that the direction given by the learned Single Judge may not be disturbed because respondent No.1 has already retired from service.

We have given serious thought to the respective arguments. Ordinarily, we would have remanded the matter to the Labour Court for adjudication of the issue relating to gainful employment of respondent No.1 during the intervening period i.e. 1.6.1998 to 6.2.2002 because the award of the Labour Court is totally silent on this issue and the learned Single Judge has also not assigned any cogent reason for ordering payment of 50% back wages to him, but keeping in view the fact that respondent No.1 has already retired from service and also the fact that the appellants did not raise the plea of his gainful employment either before the Labour Court or the learned Single Judge, we do not consider it proper to adopt that course. Shri M.S.K. Rama Rao could not offer any explanation as to why in the proceedings of the Labour Court, the appellants did not take up the plea of gainful employment of respondent No.1 and did not lead evidence in that regard and why affidavit was not filed by them to controvert the averments contained in paragraph 4 of the affidavit filed by the latter in support of the writ petition. Therefore, we do not see any tangible reason to interfere with the direction given by the learned Single Judge.

In **Hindustan Tin Works v. Employees** (supra), the Supreme Court considered the issue relating to payment of back wages and held as under:

> " 1) Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally

and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.

2) In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.

3) If the normal rule in a case like this is to award full back wages, the burden will be on the appellant-employer to establish circumstances which would permit a departure from the normal rule. If the employer pleads financial incapacity and expects the workmen to sacrifice a part of the back wages due to them, there must be a corresponding reduction by the management in its emoluments and expenses."

In **Gujarat Steel Tubes Ltd. v. Mazdoor Sabha** (supra), the majority of the three Judges Bench of the Supreme Court referred to the precedent in **Hindustan Tin Works v. Employees** (supra) and observed:

> "Dealing with the complex of considerations bearing on payment of back wages the new perspective emerging from Article 43-A cannot be missed, as explained in **Hindustan Tin Works**. Labour is no more a mere factor in production but a partner in industry, conceptually speaking, and less than full back wages is a sacrifice by those who cannot best afford and cannot be demanded by those, who least sacrifice their large "wages" though can best

afford, if financial constraint is the ground urged by the latter (Management) as inability to pay full back pay to the former. The morality of law and the constitutional mutation implied in Article 43-A bring about a new equation in industrial relations. Anyway, in **Hindustan Tin Works case**, 75 per cent of the past wages was directed to be paid. Travelling over the same ground by going through every precedent is supererogatory and we hold the rule is simple that the discretion to deny reinstatement or pare down the quantum of back wages is absent save for exceptional reasons."

In **Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya** (supra), the Supreme Court found that neither the Labour Court nor the Division Bench of the High Court considered the issue of back wages in a correct perspective and held that ends of justice will be served if the respondent is paid 50% back wages. This is evinced from paragraphs 12 and 16 of the judgment, which are extracted below:

> **"12.** From the award passed by the Industrial Tribunal which has been confirmed by the Division Bench of the High Court, it is clear that the order for payment of full back wages to the workman was passed without any discussion and without stating any reason. It appears that the Tribunal and the Division Bench had proceeded on the footing that since the order of dismissal passed by the management was set aside, the order of reinstatement with full back wages was to follow as a matter of course.
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> **16.** As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement. The amount already paid as wages or subsistence allowance during the pendency of the various

proceedings shall be deducted from the back wages now directed to be paid. The appellant will calculate the amount of back wages as directed herein and pay the same to the respondent within three months, failing which the amount will carry interest at the rate of 9% per annum. The award of the Labour Court which has been confirmed by the Division Bench of the High Court stands modified to this extent. The appeal is disposed of on the above terms. There will be no order as to costs."

By applying the ratio of the above noted judgments to the facts of this case, we hold that the learned Single Judge did not commit a grave error by directing payment of 50% back wages to respondent No.1. We are conscious that in a number of recent decisions i.e. **Allahabad Jal Sansthan v. Daya Shankar Rai**[4], **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[5], **Nagar Mahapalika v. State of U.P.**[6], **Haryana State Development Corpn. Ltd. v. Mamni**[7], **Muir Mills Unit of NTC (U.P.) Ltd. v. Swayam Prakash Srivastava**[8] and **J.K. Synthetics Ltd. v. K.P. Agrawal**[9], the Supreme Court has emphasized the need for adopting a pragmatic approach in the matter of award of back wages and also held that direction for payment of full or half back wages should not be issued as a matter of course. However, we do not consider it necessary to deal with those cases because each case was decided on its peculiar facts.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1149 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

July 26, 2007

C.V. NAGARJUNA REDDY, J

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[1] (1979) 2 SCC 80
[2] (1980) 2 SCC 593
[3] (2002) 6 SCC 41
[4] (2005) 5 SCC 124
[5] (2006) 1 SCC 479
[6] (2006) 5 SCC 127
[7] (2006) 9 SCC 434
[8] (2007) 1 SCC 491
[9] (2007) 2 SCC 433